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Before the
Federal Communications Commission
Washington, DC 20554

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JUN 23 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments) MB Docket No. 02-136
FM Broadcast Stations) RM-10458
(Arlington, The Dalles, Moro, Fossil, Astoria,) RM-10663
Gladstone, Portland, Tillamook,) RM-10667
Springfield-Eugene, Coos Bay, Manzanita) RM-10668
and Hermiston, Oregon, and)
Covington, Trout Lake, Shoreline, Bellingham,)
Forks, Hoquiam, Aberdeen, Walla Walla,)
Kent, College Place, Long Beach and)
Ilwaco, Washington))

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

OPPOSITION TO MOTION TO DISMISS

Mid-Columbia Broadcasting, Inc. ("Mid-Columbia"), licensee of Station KMCQ(FM), The Dalles, Oregon, and First Broadcasting Investment Partners, LLC (together, "Joint Parties"), hereby oppose the "Motion to Dismiss" filed by Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition, LLC (together, "Triple Bogey").

1. On May 28, 2004, the Commission released a *Report and Order* in this proceeding granting the Joint Parties' proposal to, *inter alia*, relocate Station KMCQ from The Dalles, Oregon to Covington, Washington. See DA 04-1540 (rel. May 28, 2004). That *Report and Order* was subsequently set aside. DA 04-1647 (rel. June 8, 2004). However, it should be reinstated substantially as is, Triple Bogey's latest desperate effort notwithstanding.

2. Triple Bogey complains that other parties are prejudiced by the withdrawal of the Joint Parties' amended proposal for Kent, Washington. See Motion to Dismiss at 4. However,

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no party could possibly be prejudiced by that action. The *Notice of Proposed Rule Making* in this proceeding solicited comment on the Covington proposal. Neither Triple Bogey nor any other party knew anything about the Kent alternative when they filed comments and counterproposals in response to the *Notice of Proposed Rule Making*. If the Kent proposal had never been filed, Triple Bogey would have prepared and filed the same counterproposal on the same date that it did in actuality. Therefore, Triple Bogey cannot be heard to say that the withdrawal of the Kent proposal affected its counterproposal in any way.

3. There is another reason why Triple Bogey was not prejudiced by the withdrawal of the Kent proposal. Triple Bogey's counterproposal was defective on the day it was filed, for the reasons set forth in the *Report and Order*. It was defective because it required Saga Broadcasting, LLC ("Saga") to accept a channel change for Station KAFE(FM), Bellingham, Washington, that could not be used without a directional antenna, and Triple Bogey had no agreement with Saga to implement such a change. Therefore, the withdrawal of the Kent proposal puts Triple Bogey in exactly the same position it would have been in if the Kent proposal had never been filed.

4. Because no party was prejudiced by the withdrawal, Triple Bogey's attempt to distinguish on that ground other cases in which the Commission has allowed the withdrawal of a counterproposal and reinstatement of an initial proposal fails. See Motion to Dismiss at 5. Triple Bogey also notes that in *Springfield, Tennessee*, 18 FCC Rcd 25628 (2003), the filing and withdrawal of the counterproposal were the product of unforeseen circumstances. See Motion to Dismiss at 5 note 2. So too here, for the Kent proposal needed Saga's consent, and at the time the Kent proposal was filed it was not anticipated that Saga would no longer consent to change KAFE's channel as part of the Kent proposal.

5. Triple Bogey also complains that the Joint Parties did not explicitly pledge to apply for the channel at Covington and construct the station if the facilities were authorized. *See* Motion to Dismiss at 4. This argument elevates form over function. The Commission requires an expression of interest before it can make an allotment in order to avoid wasting its resources and in order not to preclude additional or improved service elsewhere. *Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988), *recon. denied*, 4 FCC Rcd 3412 (1989), *aff'd sub nom. Amor Family Broadcasting v. FCC*, 918 F.2d 960 (D.C. Cir. 1990). There can be no question in this case of the Joint Parties continuing interest in improving the coverage of KMCQ. At all times, during the prosecution of both the Covington and Kent proposals, the Joint Parties have expressed the required interest in their requested allotments. Moreover, since Triple Bogey's counterproposal was defective, it is in no position to claim it is prejudiced. *See Santa Isabel, supra*.

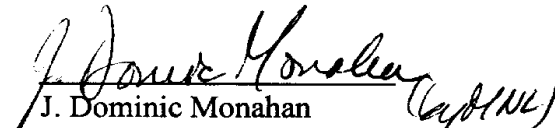
6. The Covington proposal was placed on notice. Comments to the Covington proposal were received and considered. Following that process the Covington proposal was evaluated and determined to be in the public interest. Nothing has been raised by Triple Bogey that disputes this finding.

WHEREFORE, for the foregoing reasons, the Commission should deny Triple Bogey's Motion to Dismiss.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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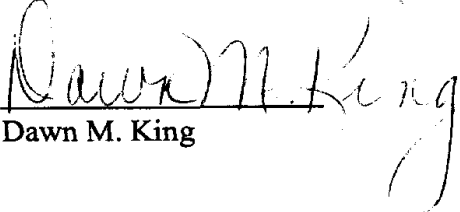
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